

December 20, 2019

VIA ECF

Hon. Brian M. Cogan
United States District Judge
United States District Court – E.D.N.Y.
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Jason Camacho v. Dave & Buster's Entertainment, Inc.*
Civil Action No. 19-cv-06022-BMC
PRE-MOTION LETTER

Dear Judge Cogan:

We represent Defendant Dave & Buster's Entertainment, Inc. ("Dave & Buster's") in the above-referenced matter. We write for two reasons. First, pursuant to Rule III.A(2) of Your Honor's Individual Practices, we write to respectfully request a pre-motion conference to seek leave to file a motion to dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), without leave to amend (the "Motion"). The initial conference in this matter is currently scheduled for January 8, 2020, at 11:30 a.m. As such, Dave & Buster's respectfully requests that its anticipated Motion be addressed at the initial conference. Second, we respectfully request that the deadline for Dave & Buster's to answer, move or otherwise respond to the complaint, which is December 26, 2019, be stayed pending the Court's decision on Dave & Buster's request for a pre-motion conference. Plaintiff consents to the request for a stay.

As will be fully detailed in Dave & Buster's Motion, this Court's jurisdiction over Plaintiff's claims is based on Plaintiff's pleading of a federal question under the Americans with Disabilities Act ("ADA"). The ADA only provides for injunctive relief and the recovery of attorneys' fees, and Plaintiff's Complaint asks this Court to order injunctive relief compelling Dave & Buster's to, among other things, create, stock and/or sell gift cards in Braille. Dave & Buster's Motion will ask the Court to dismiss all of Plaintiff's claims in the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that neither the ADA, New York State law, nor New York City law require that Dave & Buster's create, stock and/or sell gift cards in Braille. Indeed, as will be set forth fully in Dave & Buster's Motion, the ADA regulations promulgated by the Department of Justice, as well as case law interpreting such regulations, make clear that Dave & Buster's is under no legal obligation to create, stock and/or sell gift cards in Braille, and that its failure to do so is not a violation of the ADA, New York State law, nor New York City law.

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In addition, Dave & Buster's Motion will ask the Court to dismiss all of Plaintiff's claims in the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) on the ground that Plaintiff lacks standing for maintaining his claims because he has failed to sufficiently allege past injury, as well as a plausible intention to return to a Dave & Buster's location. Dave & Buster's Motion will be based on Plaintiff's core legal allegations in the Complaint, and clear case law and guidance under the ADA.¹

Moreover, given such case law and guidance, Dave & Buster's does not believe that an amendment of the Complaint can cure the deficiencies in Plaintiff's claims. Indeed, since neither the ADA, New York State law, nor New York City law require that Dave & Buster's create, stock and/or sell gift cards in Braille as a matter of law, Plaintiff will not be able to amend his Complaint to cure this legal deficiency.

For the foregoing reasons, Dave & Buster's respectfully requests that this Court grant Dave & Buster's request for a pre-motion conference and schedule such pre-motion conference to occur during the initial conference in this matter which is currently scheduled for January 8, 2020, at 11:30 a.m. Dave & Buster's also respectfully requests that its deadline to answer, move or otherwise respond to the complaint, which is currently December 26, 2019, be stayed pending this Court's decision on the request for a pre-motion conference. There have been no other requests for a stay or extension of this deadline, and Plaintiff consents to Dave & Buster's request for a stay.

We are available to discuss further should the Court have any questions.

Respectfully submitted,

/s/ Sean J. Kirby

Sean J. Kirby

cc: All counsel of record (via ECF)

¹ This pre-motion letter is based on the legal and factual arguments that Dave & Buster's contemplates making at the current time. However, Dave & Buster's reserves the right to make any additional legal arguments in its Motion.